

I urge the Commission to continue to recognize the validity of State laws that are more strictly limit interstate telemarketing calls and junk faxes (as most courts considering the issue have already done).

First, and most importantly, and as recognized in the Congressional debate surrounding the original TCPA, consumers and businesses do not want telemarketing calls or junk faxes (especially junk faxes, as they transfer the cost of unwanted advertising onto recipients). It is quite clear from the comments filed here and from the actions of state legislatures across the country that the TCPA (especially as eviscerated by the JFPA) does not adequately address the needs of consumers and businesses to enjoy privacy in their own home, to not be awakened at 3:30 AM by a junk faxer, and not to have their personal or business resources subject to unwanted trespass and conversion.

Second, the TCPA does not meet either of the tests identified by United States Supreme Court (*English v. Gen. Elec. Co.*, 496 U.S. 72, 78-79 (1990)) for preemption of state laws (field preemption or conflict preemption).

In passing the TCPA, Congress notably DID NOT write express preemption re interstate telemarketing and faxing into the law. One must presume that Congress would have done so had it intended such “field” preemption to exist. In fact, the existence of the saving clause in the TCPA makes it clear that Congress did not intend for the TCPA to occupy the field.

Similarly, there appears to be no conflict between the TCPA and, e.g., the newly passed California Law. If one wants to send a junk fax to California, the junk faxer would need to comply with both laws. This is not a new or unique concept, nor is it difficult to do, nor does it introduce any inherent conflict.

I urge the Commission to tally comments on this issue and compare the number of filers saying they would like to receive more telemarketing calls or unsolicited advertising faxes to the number of filers saying they would like their more restrictive state laws preserved and/or want fewer telemarketing calls/junk faxes.

I’ve not seen one filing (except by telemarketers/junk faxers) asking for more telemarketing calls or junk faxes. Even those comments filed by telemarketers don’t say that THEY would like more such calls.

I urge the Commission to ensure that the states maintain the ability to enact more restrictive telemarketing/junk fax laws both because that is what

consumers and businesses want and because the TCPA does not meet the tests required for preemption of state laws.